IN THE

SUPREME COURT,

OF THE

UNITED STATES.

OCTOBER TERM, 1898.

THE UNITED STATES, Petitioner,

vs.

THE BUFFALO NATURAL GAS FUEL COMPANY.

No. 64.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

BRIEF FOR APPELLEE.

I.

The commercial designation and classification of natural gas as a mineral, having been fixed and determined by the United States government itself, controls this case.

a. The principal and most important publication of the government, for the information of Congress, THE STATISTICAL ABSTRACT OF THE

UNITED STATES, which has been published at the Government Printing Office regularly since 1877, has designated and classified natural gas as a mineral, from the year 1882, the time when this product began to have a commercial value in this country.

The Statistical Abstract is prepared annually by the Bureau of Statistics, which is one of the bureaus of the Treasury Department, and under the direction of the Secretary of the Treasury, exactly as is the Customs Bureau of that department.

It would not be practical for the members of Congress to have before them all of the publications regarding our commerce, finance, coinage, immigration, postal service, public lands, population, education, railroads, agriculture, mining, etc., and for this reason the Bureau of Statistics prepares the Statistical Abstract of these reports for ready and practical reference, and the Secretary of the Treasury transmits it annually to Congress, addressed to the Speaker of the House of Representatives. It is printed by order of the House and distributed to the members for their information in the matters concerning which they are called upon to legislate. This abstract is of special utilitarian value to the Ways and Means Committee in preparing tariff and other acts for the purpose of raising revenues, for it gives complete information as to our exports and imports and agricultural and other products, as well as other matters.

Fac simile copies of the pages of this Statistical Abstract for the years 1888, 1889 and 1890, are printed herewith. These pages show the govern-

ment's commercial classification of natural gas, the Abstracts for 1888 and 1889 having been printed prior to the enactment of the Tariff Act of 1890, and the Abstract for 1890 having been printed a few months after the enactment of that act. The Abstract for 1891 was introduced in evidence before the Board of General Appraisers (p. 63). It gives the quantities and values of minerals produced in the United States from the year 1882, and is exactly the same in its classification of natural gas as the abstracts above-referred to, except that one more year of commercial statistics is added.

b. It is urged by the learned counsel for the government, that the Court cannot take judicial notice of the Statistical Abstracts for the years 1888, 1889 and 1890, because they were not introduced in evidence, and that the Abstract for 1891 should be disregarded because it was printed after the enactment of the Tariff Act of 1890, although it classifies natural gas as a mineral, and gives its commercial value from the year 1882.

Matters of which Courts will take judicial notice have been materially extended, particularly in regard to matters connected with the government itself.

In Caha vs. United States, 152, U. S., 211, this Court held that it would take judicial notice of the rules and regulations prescribed by the Interior Department, relating to contests before the land office, and of all such rules and regulations prescribed by the principal departments of the government under express authority of an act of Congress, for the transaction of business in which the public

are interested and have a right to participate, and by which they are controlled.

The Courts have held frequently that official publications, such as census reports, official proclamations and messages issued in the exercise of the constitutional authority of the executive, are matters of judicial notice.

Hawkins vs. Thomas, 29 N. E. Reports, 157.

People vs. Williams, 64 Cal. 187.

Wills vs. Missouri Pac. R'y Co., 19 S. W. Reports, 530.

It is likewise well settled that Synopses of Treasury Decisions, and rules and regulations of that department, published in the form of Department Circulars, will be consulted by the Court without being put in evidence.

Dominici vs. United States. 72 Fed. 46.

c. The classification and designation of natural gas as a mineral is definite, uniform and general. This classification is found in the various official publications of the U. S. government, such as the 10th and 11th U. S. Census Reports, the Annual Reports of the Director of the U. S. Geological Survey (pp. 61 and 64), and other official publications (pp. 68 and 69), and all of the scientific publications, such as Dana's Mineralogy (p. 70), Applied Geology, by Sam'l H. Williams (professor of geology at Cornell Univ.) (p. 71).

Nowhere has natural gas been designated otherwise than as a mineral from the time it became known to commerce and began to have any commercial value.

STATISTICAL ABSTRACT

OF THE

UNITED STATES.

1888

ELEVENTH NUMBER.

Finance, Coinage, Commerce, Immigration, Shipping,
The Postal Service, Population, Railroads,
Agriculture, etc.

PREPARED BY THE BUREAU OF STATISTICS UNDER THE
DIRECTION OF THE SECRETARY OF THE TREASURY.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1889.

No. 30.—QUANTITIES AND VALUES OF MINERALS PRODUCED IN THE UNITED

[Prepared by the United

Products.	1882.		1883.	
	Quantity.	Value.	Quantity.	Value.
METALLIC.				
		Dollars.		*Dollars.*
Pig-iron, spot value (*a*).....long tons (*b*)..	4,623,323	106,336,429	4,595 510	91,910,200
Silver (*c*), coining value.....troy ounces..	36,197,695	46,800,000	35,733,622	46,200,000
Gold, coining value (*d*).....do....	1,572,186	32,500,000	1 451,249	3 .000,000
Copper (*e*), value at New York City....pounds..	91.646 232	16.038,091	117,151,795	18,084,807
Lead, value at New York City.....short tons..	132,890	12 624,550	143.957	12,322,719
Zinc, value at New York City.....do....	33,765	3 646 620	36,888	3,311.106
Quicksilver, value at San Francisco..flasks (*f*)..	52,732	1,487.042	46,725	1,253,632
Nickel (*g*), value at Philadelphia.....pounds..	281,616	309,777	58,700	52,920
Aluminum, value at Philadelphia..troy ounces..	(*h*)	.....	1,000	875
Antimony, value at San Francisco..short tons..	60	12,000	60	12,000
Platinum, value (crude) at New York City, troy ounces.....	200	600	200	600
Total value of metallic products.....	.....	219 755,109	.....	203,128,859
NON-METALLIC (SPOT VALUES).				
Bituminous coal (*i*)..... .....long tons..	60,861,190	76,076,487	68,531,500	82,237,800
Pennsylvania anthracite .....do....	31,358,264	70,551,094	34,326,469	77,257,055
Building stone.....	.....	21.000,00	.....	20,000,000
Lime.....barrels (*l*)..	31,000,000	21,700,000	32,000,000	19,200,000
Petroleum..... .....do (*m*) ...	30,053,500	23,704 698	23,400,229	25,740 252
Natural Gas.....	.....	215,000	.....	475,000
Cement.....barrels (*n*)..	3,250,000	3,672,750	4,190.000	4 293,500
Salt. .....do (*o*)....	6,412 373	4 340,140	6,192.231	4,211,042
Limestone for iron flux..... .long tons..	3,850,000	2,310,000	3,814,273	1,907,136
South Carolina phosphate rock,..... .....do....	332,077	1,992 462	378,380	2,270,280
Zinc-white.....short tons..	10,000	700,000	12,000	840,000
Mineral waters .....gallons sold..	.....	.....	7,529,423	1,119,646
Borax.....pounds..	4,236,291	338,903	6,500,000	585,000
Gypsum .....short tons..	.....	.....	.....	.....
Manganese ore.....long tons..	3,500	52,500	8,000	120,000
Mineral paints.....do....	7,000	100,000	7,000	84,000
New Jersey marls.....short tons..	1,080,000	540 000	972,000	486,000
Pyrites .....long tons..	12,000	72,000	25,000	137,500
Flint.....do....	25,000	100,000	25,000	100,000
Mica..... .....pounds..	100,000	250,000	114,000	285,000
Corundum.....short tons..	500	80,000	550	100,000
Sulphur .....do....	600	21,000	1,000	27,000
Precious stones.....	.....	75,000	.....	74,050
Gold quartz, sonvenirs, jewelry, etc.....	.....	75 000	.....	115,000
Crude barytes.....long tons..	20,000	80,000	27,000	108 000
Bromine .....pounds..	250,000	75,000	301,100	72,264
Feldspar.....long tons..	14,000	70,000	14 100	71,112
Chrome iron ore .....do....	2,500	50,000	3,000	60,000
Graphite.....pounds..	425,000	34,000	575,000	46,000
Fluorspar.....short tons..	4,000	20,000	4,000	20,000
Slate ground as a pigment .....long tons..	2,000	24,000	2,000	24,000
Cobalt oxide.....pounds..	11,653	32,046	1,096	2,795
Novaculite.....do....	.....	.....	.....	.....
Asphaltum..... .....short tons..	3,000	10,500	3,000	10,500
Asbestos .....do....	1,200	36 000	1,000	30,000
Rutile.....pounds..	500	1,800	550	2,000
Total value non-metallic mineral products.	.....	228,410,380	.....	242,111,889
Total value metallic products.....	.....	219,755 109	.....	203,128,859
Estim'd value of mineral products unspecified (*q*)	.....	8 000.000	.....	8,000,000
Grand total.....	.....	456,165,489	.....	453,240,748

a By "spot" value is meant value at the point of production.

b "Long" tons are tons of 2,240 avoirdupois pounds; "short" tons are tons of 2,000 avoirdupois pounds.

c $1.2929 per troy ounce..

d $20.6718 per troy ounce.

e Including copper made from imported pyrites.

f Of $76½ avoirdupois pounds net.

g Including nickel in copper-nickel alloy, and in exported ore and matte.

h Not reported.

i Including Brown coal and lignite, and small lots of anthracite mined elsewhere than in Pennsylvania.

j The commercial product of bituminous coal, that is, the amount marketed, was only—

Years.	*Quantity.*	*Value.*
1882.....	57.963,038	$72,453,797
1883.....	65,030,171	78,036,205
1884.....	66,809,356	74,149,824
1885.....	63,769,284	80,650,564
1886.....	63,380,119	75,554,629
1887.....	75,454,464	94,230,752

STATES DURING THE CALENDAR YEARS FROM 1882 TO 1887, INCLUSIVE.

States Geological Survey.]

1884.		1885.		1886.		1887.	
Quantity.	Value.	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.
	Dollars.		*Dollars.*		*Dollars.*		*Dollars.*
4,097,767	73,761,624	4,044,525	64,712,400	5,683,329	95,195,760	6,417,148	121,925,800
37,744,605	48,800,000	39,910,279	51,600 000	39,445,312	51,000,000	41,269,240	53,441,000
1,489,949	30 800,000	1,538,376	31,801,000	1,881,250	35,000,000	1.596,500	33,100,000
147,805,407	18,106,162	170,962,607	18,292,990	161,235,381	16,527,651	184,670,524	210,52,440
139,897	10,537,042	129,412	10,469 431	135,629	12,697,749	160,700	14,463,000
38,544	3,422,707	40,688	3,539,856	42,641	3,752,408	50,340	4,782,300
31,913	936,327	32,073	979,189	29,981	1,060,000	33,825	1,429,000
64,550	48.412	277,904	191,753	214,992	127,157	205,556	133,200
1,800	1,350	3,400	2 550	.....	27,000	.....	74,905
60	12,000	50	10,000	35	7,000	75	15,500
150	450	250	187	50	100	448	1,838
.....	186 426 074	.....	181.599.365	.....	215,364,825	.....	250,419,283
73,730,539	77,417,066	64,840,668	82,347,648	65,810,676	78,481 056	*j*78 470,857	98,004,656
33,175,756	66,351,512	34,228,548	76,671,948	34,853,077	76,119,120	*k*37,578,747	84,552,181
.....	19,000,000	.....	19,000,000	.....	19,000,000	.....	25,000,000
37,000,000	18,500,000	40,000,000	20,000,000	42,500,000	21,250,000	46,750,000	23,375,000
24,089,758	20,476,294	21,842,041	19,193,694	28,110 115	20,028,457	28,249,597	18,856,606
.....	1,460,000	.....	4,854,200	.....	9,847,150	.....	15,838 500
4,000,000	3,720,000	4,150,000	3 492,500	4,500,000	3,960,000	6,692,744	5,186 877
6,514,937	4,197,734	7,088,653	4,825 345	7,707,081	4 736,585	7,831,962	4,093,846
3,401,930	1 700 965	3,356,956	1,678,478	4 717,163	2,850 297	5,377 000	3,226,200
431,779	2 374,781	437,856	2,846,064	430,549	1,872,936	480,5 8	1,836,818
13,000	910,000	15,000	1,050,000	18,000	1,440,000	17,000	1,440,000
10,215,328	1,459,143	9,148,401	1,312 845	8,950,317	1,284,070	8,259,509	1,261,473
7,000,000	490,000	8,000,000	480,000	9,778,290	488,915	11,000,000	550,000
.....	.....	90 405	405,000	95 250	428,625	95,000	425,000
10,000	120,000	23,258	190,281	30,193	377,636	34,524	333,844
7,000	84,000	3,950	43 575	15,800	285,000	20,000	310,000
875,000	437,500	875,000	437,500	800 000	400,000	600 000	300,000
35,000	175,555	49,000	220,500	55,000	247,500	52,500	210,000
30,000	120,000	30 000	120,000	30,000	120,000	32,000	185,000
147,410	368,525	92,000	161,000	40,000	70,000	70,500	142,250
600	108,000	600	108,000	645	116,190	600	108,000
500	12,000	715	17,875	2,500	75,000	3,000	100,000
.....	82,975	.....	69,900	.....	79,056	.....	88,600
.....	140 000	.....	140,000	.....	40 000	.....	75,000
25,000	100,000	15,000	75 000	10,000	50,000	15,000	75,000
281.100	67,464	310,000	89,900	428 334	141,350	199,087	61,717
10 900	55,112	13,600	68,000	14 900	74,500	10,200	56,100
2,000	35,000	2,700	40,000	2 000	30,000	3,000	40,000
.....	.....	327,883	26,231	415,525	33,242	416,000	34,000
4,000	20,000	5,000	22,500	5,000	22,500	5,000	20,000
2,000	20,000	1,975	24,687	3,000	30,000	2,000	20 000
2,000	5,100	68,723	65,373	.....	*p* 36 878	*p* 18.340	18,774
.....	.....	1,000,000	15,000	1,180,000	15,000	1,200,000	16,000
3,000	10,500	3,000	10,500	3,500	14,000	4,000	16,000
1,000	30 000	300	9,000	300	6,000	150	4,500
600	2,000	600	2 000	600	2 000	1,000	3,000
.....	220,050,674	.....	240,114,544	.....	243,903,093	.....	285.864 942
.....	186,426 074	.....	181,599,365	.....	215,364,825	.....	250 419,283
.....	7,000,000	.....	7,000 000	.....	6,000,000	.....	6 000,000
.....	413,476.748	.....	428,713,909	.....	465,327,888	.....	542,284 225

k The commercial product of anthracite, that is, the amount marketed, was only—

Years.	*Quantity.*	*Value.*
1882.....	29 150,096	$65,520,216
1883.....	31,793,027	71,534,311
1884.....	30,718 293	61,436.5-6
1885.....	32,265,421	72,274.544
1886.....	32,764,710	71,558,126
1887	35,273,442	79,365,244

j Of 200 pounds.
m Of 42 gallons.
n Of 300 pounds for natural cement, and 400 pounds for artificial Portland.
o Of 280 pounds net.
p Including Cobalt oxide in ore and matte.
q Including, except where an amount is specified in the table, fire-clay, kaolin, potter's clay, common brick clay, terra cotta, building sand, glass sand, limestone used as flux in lead smelting, limestone in glass making, iron ore used as flux in lead smelting, marls (other than New Jersey), gypsum, tin ore, iridosmide, mill buhrstone and stone for making grindstones, novaculite, lithographic stone, talc and soapstone, quartz, nitrate of soda, carbonate of soda, sulphate of soda, native alum, ozocerite, mineral soap, strontia, infusorial earth and tripoli, pumice-stone, sienna, umber, zinc-white, and mineral waters.

STATISTICAL ABSTRACT

OF THE

UNITED STATES.

1889

TWELFTH NUMBER.

Finance, Coinage, Commerce, Immigration, Shipping.
The Postal Service, Population, Railroads,
Agriculture, etc.

PREPARED BY THE BUREAU OF STATISTICS UNDER THE DIRECTION OF THE SECRETARY OF THE TREASURY.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1890.

No. 30.—QUANTITIES AND VALUES OF MINERALS PRODUCED IN THE UNITED STATES DURING THE CALENDAR YEARS FROM 1884 TO 1888, INCLUSIVE.

[Prepared by the United States Geological Survey.]

Products.	1884.		1885.		1886.		1887.		1888.	
	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.
METALLIC.		*Dollars.*		*Dollars.*		*Dollars.*		*Dollars.*		*Dollars.*
Pig iron, spot value (*a*).....long tons (*b*)..	4,097,868	73,761,624	4,044,525	64,712,400	5,683,329	95,195,760	6,417,148	121,925,800	6,489,738	107,000,000
Silver (*c*), coining value..... troy ounces..	37,744,605	48,800,000	39,910,279	51,600,000	39,445,312	51,000,000	41,209,240	53,441,300	45,783,632	59,195,000
Gold, coining value (*d*).....do....	1,489,949	30 800.000	1,538,376	31,801,000	1,881,250	35,000,000	1,596,500	33,100,000	1,604,927	33,175,000
Copper (*e*), value at New York City..pounds..	147,805,407	18,106,162	170,962,607	18,292,999	161,235,381	16,527,651	185,227,331	21,115 916	231,270,622	33,833,954
Lead, value at New York City.....short tons..	139,897	10,537,042	129,412	10,469,431	135,629	12,667,749	160,700	14,463.000	180,555	15,924,951
Zinc, value at New York City.....do....	38,544	3,422,707	40,688	3,539,856	42,641	3,752,408	50,340	4,782,300	55,903	5,500,855
Quicksilver, value at San Francisco..flasks (*f*)..	31,913	936,327	32,073	979,189	29,981	1,060,000	33,825	1,429,000	33,250	1,413,125
Nickel (*g*), value at Philadelphia...pounds....	64,550	48,412	277,904	191,753	214,992	127,157	205,556	133,200	207,328	128,382
Aluminum, value at Philadelphia.....do....	125	1,350	235	2,550	*h* 5,200	27,000	*h* 18,000	59,000	19,000	65,000
Antimony, value at San Francisco..short tons..	60	12,000	50	10 000	35	7,000	75	15,500	100	20,000
Platinum, value (crude) at New York City, troy ounces.....	150	450	250	187	50	100	448	1,838	500	2,000
Total value of metallic products.....	.....	186,426 074	.....	181,599,365	.....	215,364,825	.....	250,466,854	.....	256,258,267
NON-METALLIC (SPOT VALUES).										
Bituminous coal (*h*).....long tons..	73,730 539	77,417 066	64,840,668	82,347,648	65,810,676	78,481,056	678,470,857	98.004,656	91,106,998	122,497.341
Pennsylvania anthracite.....do....	33,175,756	66 351.512	34,228,548	76,671,948	34,853.077	76,119,120	37,578,747	84,552 181	41,624,610	89,020,483

a By "spot" value is meant value at the point of production.
b "Long" tons are tons of 2,240 avoirdupois pounds; "short" tons are tons of 2,000 avoirdupois pounds.
c $1 2929 per troy ounce.
d $20.6718 per troy ounce.
e Including copper made from imported pyrites.
f Of 76½ avoirdupois pounds net.
g Including nickel in nickel-alloy, and in exported ore and matte.
h Including brown coal and lignite, and small lots of anthracite mined elsewhere than in Pennsylvania.

i The commercial product of bituminous coal, that is, the amount marketed was only—

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1882.....	57,963,038	$72,453,797
1883.....	65 030,171	78 036,205
1884.....	66,809,356	70,149,824
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1884.....	30,718,293	61,436,586
1885.....	32,265,421	72,274 544
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1887.....	35,273,442	79,365,244

No. 30.—QUANTITIES AND VALUES OF MINERALS PRODUCED IN THE UNITED STATES FROM 1884 TO 1888, INCLUSIVE, ETC.—Continued.

Products.	1884.		1885.		1886.		1887.		1888.	
	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.
		Dollars.		*Dollars.*		*Dollars.*		*Dollars.*		*Dollars.*
Building stone	.....	19,000,000	.....	19,000,000	.....	19,000,000	.....	25,000,000	.....	25,500,000
Lime.....barrels (*a*)..	37 000.000	18,500,000	40,000,000	20,000,000	42,500,000	21,250,000	46,750,000	23 375,000	49,087,000	24,543,500
Petroleum.....do (*b*)....	24,089,758	20,476,294	21,842,041	19,193,694	28,110,115	20,028,457	28,249 597	18,856,606	27,346,018	24,598,559
Natural Gas	.....	1,460,000	.....	4,854,500	.....	9,847,150	.....	15,838,500	.....	22,662,128
Cement.....barrels (*c*)..	4,000,000	3,720,000	4,150,000	3,492,500	4,500,000	3,990,000	6,692,744	5,186,877	6,253,295	4,533,639
Salt.....do (*d*)....	6 514,937	4,197,734	7,038,653	4,825,345	7,707,081	4,736,585	8.003,962	4,093,846	8,055,881	4,377,204
Limestone for iron flux.....long tons..	3,401,930	1,700,965	3,356,956	1,678,478	4,717,163	2,830,297	5,377,000	3,226,200	5,428,000	2,719,000
South Carolina phosphate rock.....do....	431,779	2,374,784	437,856	2,846,064	430,549	1,872,936	486,558	1,836,818	433,705	1,951,673
Zinc-white.....short tons..	13,000	910,000	15,000	1,050,000	18,000	1,440,000	18,000	1,440,000	20,000	1,600,000
Mineral waters.....gallons sold..	10,215,328	1.459,143	9,148,401	1,312,845	8,950,317	1,284,070	8,259,609	1,361.473	9,628,568	1,709,302
Borax.....pounds..	7,000,000	490,000	8,000,000	480.000	9,778,290	488,915	11,000,000	550,000	7,589,000	55,340
Gypsum.....short tons..	95,000	425,000	90,405	405,000	95,250	428,625	95,000	425,000	96,000	430,000
Manganese ore.....long tons..	10,000	120,000	23,258	190,281	30,193	277,636	34,524	333,844	25,500	255,000
Mineral paints.....do....	7,000	84,000	3,950	43,575	15,800	285,000	20,000	310,000	24,000	388,000
New Jersey marls.....short tons..	875,000	437,500	875,000	437,500	800,000	400,000	600,000	300,000	600,000	300,000
Pyrites.....long tons..	35,000	175,000	49,000	220,500	55,000	247,500	52,500	210,000	54 331	167,658
Flint.....do....	30 000	120,000	30,000	120,000	30,000	120,000	32,000	185,000	30,000	175,000
Mica.....pounds....	147,410	368,525	92,000	161,000	40,000	70,000	70,500	142,250	48,000	70.000
Corundum.....short tons..	600	108,000	600	108,000	645	116,190	600	108,000	589	91,620
Sulphur.....do....	500	12,000	715	17,875	2,500	75,000	3,000	100,000	.....	.....
Precious stones	.....	82,975	.....	69,900	.....	79,056	.....	88,000	.....	64,850
Gold quartz, souvenirs, jewelry, etc	.....	140,000	.....	140,000	.....	40,000	.....	75,000	.....	75,000
Crude barytes.....long tons..	25,000	100,000	15,000	75,000	10,000	50,000	15,000	75,000	20,000	110,000
Bromine.....pounds..	281,100	67,464	310,000	89,900	428,334	141,350	199,087	61,717	307,386	95,280
Feldspar.....long tons..	10,900	55,112	13,600	68,000	14,900	74,500	10,200	56,100	8,700	50,000
Chrome iron ore.....do....	2,000	35,000	2,700	40,000	2,000	30,000	3,000	40.000	1,500	20,000
Graphite.....pounds..	.....	.....	327,883	26,231	415,525	33,242	416.000	34,000	400,000	33,000
Fluorspar.....short tons..	4,000	20,000	5,000	22,500	5,000	22,500	5,000	20,000	6,000	30,000
Slate ground as a pigment.....long tons..	2,000	20,000	1,975	24,687	3,000	30,000	2,000	20,000	2,500	25,000
Cobalt oxide.....pounds..	2,000	5,100	68 723	65,373	.....	*e* 36,878	*e* 18,340	18,774	12,236	18,441

Novaculite.....do....	.....	.....	1,000,000	15,000	1,160,000	15,000	1,200,000	16,000	1,500,000	18,000
Asphaltum.....short tons..	3,000	10,500	3,000	10,500	3,500	14,000	4,000	16,000	538,000	331,500
Asbestos.....do....	1,000	30,000	300	9,000	200	6,000	150	4,500	100	3,000
Rutile.....pounds..	600	2,000	600	2,000	600	2,000	1,000	3,000	1,000	3,000
Total value non-metallic mineral products	.....	220,475,674	.....	24 ,114,544	.....	243,963,083	.....	285,864,942	.....	328,914,528
Total value metallic products.....	.....	186,426,074	.....	181,599,365	.....	215,364,825	.....	250,466,854	.....	256,258,267
Est'd value of mineral products unspecified (*f*)	.....	7,000,000	.....	7,000,000	.....	6,000,000	.....	6,000,000	.....	6,500,000
Grand total.....	.....	413,901,748	.....	428,713,909	.....	465,327,888	.....	542,331,796	.....	591,672,795

a Of 200 pounds.
b Of 42 gallons.
c Of 300 pounds for natural cement, and 400 pounds for artificial Portland.
d Of 280 pounds net.
e Including cobalt oxide in ore and matte.
f Including, except where an amount is specified in the table, fire-clay, kaolin, potter's clay, common brick clay, terre cotta, building sand, glass sand, limestone used as flux in lead smelting, limestone in glass making, iron ore used as flux in lead smelting, marls (others than New Jersey), gypsum, tin ore, iridosmine, mill buhrstone and stone for making grindstones, novaculite, lithographic stone, talc and soapstone, quartz, n trate of soda, carbonate of soda, sulphate of soda, native alum, ozocerite, mineral soap, strontia, infusorial earth and tripoli, pumice-stone, sienna, umber, zinc-white, and mineral waters.

STATISTICAL ABSTRACT

OF THE

UNITED STATES.

1890

THIRTEENTH NUMBER.

Finance, Coinage, Commerce, Immigration, Shipping,
The Postal Service, Population, Railroads,
Agriculture, etc.

PREPARED BY THE BUREAU OF STATISTICS UNDER THE DIRECTION OF THE SECRETARY OF THE TREASURY.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1891.

No. 31.—QUANTITIES AND VALUES OF MINERALS PRODUCED IN THE UNITED STATES DURING THE CALENDAR YEARS FROM 1885 TO 1889, INCLUSIVE.

[Prepared by the United States Geological Survey.]

Products.	1885.		1886.		1887.		1888.		1889.	
	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.
METALLIC.		*Dollars.*		*Dollars.*		*Dollars.*		*Dollars.*		*Dollars.*
Pig iron, spot value (*a*).....long tons..	4,044,525	64 712,400	5,683,329	95,195,760	6 417,148	121 925,800	6,489 738	107,000,000	7,603,643	120,000,000
Silver, coining value ($1.2929 per oz.).troy ozs..	39,910,279	51,600.000	39,445,312	51,000,000	41,269,240	53,441,300	45,783,632	59,195,000	50 000.000	64,646,464
Gold, coining value $20.6718 per oz.).....do....	1,538,376	31,801,000	1,881,250	35 000,000	1,598,500	33,100,000	1 604,927	33,175,000	1,587,000	32,800,000
Copper (*b*), value at New York City..pounds..	170,962,607	18,292,999	161,235,381	16 527 651	185,227,331	21 115,916	231,270,622	33 833 954	228 842,843	26 629,183
Lead, value at New York City .....short tons..	129,412	10,469,431	135,629	12 667 749	160,700	14,463.000	180,555	15 924,951	180,953	15,960,055
Zinc, value at New York City .....do....	40.688	3,539,856	42,641	3 752 408	50,340	4,782,300	55,903	5,500 855	60,261	5,929,682
Quicksilver, value at San Francisco..flasks (*c*)..	32,073	979,189	29,981	1 080 000	33,825	1 429 000	33,250	1,413,125	29,464	1,190,500
Nickel (*d*), value at Philadelphia.....pounds..	277,904	191,753	241,902	127,157	205 556	133,200	203,328	127,632	200,000	125,000
Aluminum, value at Philadelphia.troy ounces..	3,400	2,550	.....	27,000	.....	74,905	19,000	65,000	47,468	97,335
Antimony, value at San Francisco.short tons..	50	10,000	35	7,000	75	15,500	100	20,000	105	28,000
Platinum, value (crude) at New York City, troy ounces.....	250	187	50	100	448	1,838	500	2,000	100	400
Total value of metallic products.....	.....	181,599,365	.....	215,364 825	.....	250,482,759	.....	256,257,517	.....	267,406,619
NON-METALLIC (SPOT VALUES).										
Bituminous coal (*e*).....long tons..	64,840,668	82,347,648	65,810,676	78,481 056	78.470,857	98,004.656	91,103 998	122 498,141	94,494,000	103,600,000
(Amount marketed) .....do....	(63,569,284)	(80,640,564)	(63,380,119)	(75,554 629)	(75 454,464)	(84,230,752)	.....	.....	.....	.....
Pennsylvania anthracite.....do....	34,228,548	76,671,948	34,853,077	76,119,120	37,578,747	84,552 181	41,624 611	77,205,530	40,665,152	65,718,165
(Amount marketed).....do....	(32,265,421)	(72,274,544)	(32,764,710)	(71,558,126)	(35,273,442)	(79,365,244)	.....	.....	.....	.....
Building stone.....	.....	19,000 000	.....	19,000 000	.....	25 000,000	.....	25 500,000	.....	50,000 000
Lime .....barrels (*f*)..	40 000,000	20,000,000	42,500,000	21 250 000	46,750.000	23,375,000	49,087,000	24,543,500	50,000,000	26,000,000

a By "spot" value is meant value at the point of production.
b Including copper made from imported pyrites.
c Of 76½ pounds.
d Including nickel in copper-nickel alloy, and in exported ore and matte.
e Including brown coal and lignite, and small lots of anthracite mined elsewhere than in Pennsylvania.
f Of 200 pounds.
NOTE.—The figures in parenthesis are not included in the totals.

No. 31—Quantities and Values of Minerals Produced in the United States from 1885 to 1889, inclusive, etc.—Continued.

Products.	1885.		1886.		1887.		1888.		1889.	
	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.
NONMETALLIC (SPOT VALUES)—continued.		*Dollars.*		*Dollars.*		*Dollars.*		*Dollars.*		*Dollars.*
Petroleum.....barrels..(*g*)..	21,842,041	19,193,694	28,110,115	20,058,457	28,249,597	18,856,606	27,615,929	17,950,373	25,000,000	20,500,000
Natural gas.....	.....	4,854,200	.....	9,847,160	.....	15 838,500	.....	22,629,675	.....	30,000,000
Cement.....barrels (*h*)..	4,150,000	3,492,500	4,500,000	3,990,000	6 692,744	5,186,877	6,253,295	4,533,639	7,000,000	5,000,000
Salt.....do....(*i*)..	7,038,653	4,825,345	7,707,081	4,736,585	7,831,902	4,093,846	8,055,881	4,374,213	10,000,000	5,000,000
Limestone for iron flux.....long tons..	3,356,956	1,678,478	4,717,163	2 830,297	5,377,000	3,226,200	5,438,000	2,719,000	6,318,000	3,159,000
South Carolina phosphate rock.....do.....	437,856	2,846,064	430,549	1,872,386	480,558	1 836,818	448,567	2,018,552	530,000	2,783,776
Zinc white.....short tons..	15,000	1,050,000	18,000	1,440,000	18,000	1,440,000	20,000	1,600,000	20,000	1,600,000
Mineral waters.....gallons sold..	9,148,401	1.312,845	8,950,317	1,284,070	8,259 609	1,261 473	9,628,568	1,709,302	12,258,171	1,726,278
Borax.....pounds..	8,000,000	480,000	9,778,290	488 915	11,000,000	550,000	7,589,900	455,340	8,000,000	500 000
Gypsum.....short tons..	90,405	405,000	95,250	428,625	95,000	425,000	110,000	550 000	365,559	761,822
Manganese ore.....long tons..	23,258	190,281	30,193	277,636	34,824	333,844	29,198	279,571	35,000	300,000
Mineral paints.....do....	3,950	43 575	15,800	185,000	20,000	310,000	24,000	380,000	24,035	397,619
New Jersey marls.....short tons..	875,000	437,500	800,000	400,000	600.000	300,000	300,000	150,000	140,415	63,976
Pyrites.....long tons..	49,000	220,500	55,000	247,500	52,500	210,000	54,331	167,658	93,705	202,120
Flint.....do....	30,000	120,000	30,000	120,000	32,000	185,000	30,000	175,000	11,000	60,000
Mica.....pounds..	92,000	161,000	40,000	70,000	70,500	142,250	48,000	70,000	25,000	25,000
Corundum.....short tons..	600	108,000	645	116,190	600	108,000	589	91,620	1,498	70,686
Sulphur.....do....	715	17,875	2,500	75,000	3,000	100,000	.....	.....	750	7,850
Precious stones.....	.....	69,900	.....	79,056	.....	88,600	.....	64,850	.....	182,807
Gold quarts, souvenirs, jewelry, etc.....	.....	140,000	.....	40,000	.....	75,000	.....	75,000		
Crude barytes.....long tons..	15,000	75,000	10,000	50,000	15,000	75,000	20,000	110,000	19,161	106,313
Bromine.....pounds..	310,000	89,900	428,334	141,350	199,087	61,717	307,386	95,290	300,000	90,000
Feldspar.....long tons..	13,600	68,000	14,9 0	74 50	10,200	56,100	8 700	50,000	10,000	33,000
Chrome iron ore.....do....	2,700	40 000	2,000	30,000	3 000	40.000	1.500	22,500	2,000	30,000
Graphite.....pounds..	327,883	26,231	415,525	33,242	416,000	34,000	400,000	33,000	400,000	35,000
Fluorspar.....short tons..	5,000	22,500	5,000	22,500	5,000	20,000	60,000	30,000	9,500	45,836
Slate ground as a pigment.....long tons..	1,975	24,687	3 000	30,000	2 000	20,000	2,500	25,000	2,000	20,000
Cobalt oxide.....pounds..	68,723	65 373	.....	36,878	18,340	18 774	8,491	15,782	5,000	10,000

Novaculite	do	1,000,000	15,000	1,160,000	15,000	1,300,000	16,000	1,500,000	18,000	2,354,000	33,220
Asphaltum	short tons	3,000	10,500	3,500	14,000	4,000	16,000	53,800	331,500	53,143	256,137
Asbestus	do	300	9,000	200	6,000	150	4,500	100	3,000	30	1,800
Rutile	pounds	600	2,000	600	2,000	1,000	3,000	1,000	3,000	1,000	3,000
Total value nonmetallic mineral products			240,114,544		243,963,063		285,864,942		310,473,206		318,323,417
Total value mineral products			181,599,365		215,364,825		250,482,759		256,257,517		267,406,619
Estimated value of mineral products unspecified (*k*)			7,000,000		6,000,000		6,000,000		6,000,000		
Grand total			428,713,909		465,327,888		542,347,701		572,730,723		585,730,036

g Of 42 gallons.
h Of 300 pounds natural and 400 pounds artificial.
i Of 280 pounds.
j Including cobalt oxide in ore and matte.
k Including, except where an amount is specified in the table, fire clay, kaolin, potter's clay, common brick clay, terra cotta, building sand, glass sand, limestone used as flux in lead smelting, limestone in glass making, iron ore used as flux in lead smelting, marls (other than New Jersey), gypsum, tin ore, iridosmine mill buhrstone and stone for making grindstones, novaculite, lithographic stone, talc and soapstone, quartz, nitrate of soda, carbonate of soda, sulphate of soda, native alum, ozocerite, mineral soap, strontia, infusorial earth and tripoli, pumice stone, sienna, umber, zinc white, and mineral waters.

II.

The scientific designation of natural gas as a mineral coincides with and corroborates the commercial designation and the classification fixed by the Government.

(*a.*) The Board of General Appraisers took no evidence and there was no hearing upon the first protest of the importer, which was overruled (p. 74); but upon the hearing of the subsequent protest evidence of both the scientific and commercial designation of the article was taken, and the Board "considered the questions involved with unusual care." (Coxe, J., p. 81.)

The Board found as a fact "that natural gas is a crude mineral," and sustained the claim that it is exempt from duty under paragraph 651. N. T., (p. 72, sq.)

The Board took the testimony of scientific experts, and at the several hearings in New York and Washington examined a number of well known geologists and chemists, and found that the preponderance of the evidence was to the effect that natural gas is a crude mineral (p. 73.)

Other evidence, including such documentary evidence as the Statistical Abstract (p. 63), above referred to, and the U. S. Census Reports (p. 61), Reports of the United States Geological Survey to the Secretary of the Interior (pp. 63 and 64) and State Reports (p. 65), was carefully considered by the Board.

The fact that natural gas had been judicially determined to be a mineral was also considered.

Ontario Nat. Gas. Co. vs. Gosfield, 18 Ontario Appeals Reports, 626.

The findings of fact of the Board of General Appraisers should not be disturbed unless wholly unsupported by evidence or manifestly wrong.

The Board of General Appraisers is the creature of statute, and a definition of its powers is to be found in Sections 12 and 14 of the Customs Administrative Act of 1890, which conferred judicial power, and the phraseology implies a Court.

The return made by the Board to the Circuit Court for review is to be considered substantially in the same manner as the report of a master is considered in that Court.

The Court should not undertake to disturb the findings of the Board upon doubtful questions of fact, and especially as to questions of fact which turn upon the intelligence and credibility of witnesses who have been produced before the Board. Even though the Court should reach a different conclusion on the facts, it would still be its duty to affirm the finding of the Board if fairly sustained by the proof. There are many reasons why this rule should apply in these cases. *The Board is composed of a body of trained experts*, constantly passing upon questions of fact arising under the tariff laws, and having the great advantage of seeing and hearing the witnesses. Their findings upon the facts should not be lightly set aside. The rule was enunciated soon after the Board was organized, and has been reiterated in a large number of decisions since." (Opinion, Coxe, J., p. 81.)

In re Van Blankenstyn et al., 56 Fed. Rep., 474.

In re Herman et al., 56 Fed. Rep., 477

In re Kursheedt Mfg. Co., 49 Fed. Rep. 633.

Marine vs. Lyon et al., 62 Fed. Rep., 153.

Re Bing, 66 Fed., 727.

Mexican Onyx T. Co. vs. United States, 66 Fed.. 732.

Dennison Mfg. Co. vs. United States, 66 Fed., 728.

The Board of General Appraisers is vested with a certain discretion, which will be respected by the Courts except in cases of manifest abuse thereof.

Earnshaw vs. United States, 146 U. S., 60.

The decisions of the Board of General Appraisers should be regarded in much the same way as the decisions of Boards of Fire Commissioners, Boards of Railroad Commissioners and Boards of Police Commissioners, when sitting as inferior judicial tribunals.

The rule governing the decisions of such tribunals is thus laid down in People vs. Board of Police Commissioners, 93 N. Y., 97; "Assuming the rule to be that the facts involved in the determination are satisfactorily supported by the evidence so that the verdict of a jury finding such facts would not be set aside as against the weight of evidence, we are unable to see how it can be claimed that the decision of the Commissioners was not justified."

The same doctrine has been held in People ex rel vs. Board of Police, 69 N. Y., 408; People ex rel vs. Board of Fire Commissioners, 82 N. Y., 358; Matter of Chapin, 84 Hun, 490; Matter of

Southern Boulevard R. R. Co., 49 State Rep., 732; Matter of City of Rochester, 48 State Rep., 358; Matter of Prospect Park, 24 Hun, 199; Matter of Brooklyn Elev. R. R. Co., 87 Hun, 88; The People ex rel Doherty vs. Commrs., 84 Hun, 66; The People ex rel Patrick Masterson vs. French et al., 110 N. Y., 494; The People ex rel McAleer vs. French et al., 119 N. Y., 502; People ex rel Coyle vs. Martin et al., 142 N. Y., 352.

In the matter of Amsterdam J. & G. R. R. Co., 86 Hun, 581, the Court said: "This mode of proceeding, while it grants the Court power to review the action of the Railroad Commissioners, plainly indicates that the Court is to treat the application as in the nature of a review of the decision of a subordinate tribunal, and not as it would an original application made in the first instance. *The Commissioners should be credited with some technical knowledge which this Court is not presumed to possess.*"

The Statute, Sec. 16, gives the General Appraisers power to cite before them and examine upon oath all persons having any knowledge which will aid them in ascertaining the classification, and the production of documents which may assist them in properly classifying an article of merchandise.

The Collector of Customs has levied a tax of ten per cent. ad valorem upon natural gas, under Sec. 4 of the Tariff Act of 1890 (Chap. 1244, Laws 1890), which reads as follows:

"That there shall be levied, collected and paid on the importation of all raw or unmanufactured articles not enumerated or provided for in this act, a duty of ten per centum ad valorem," etc.

Section 4 of the Tariff Act of 1894 is precisely the same.

The appellees' contention is that natural gas is provided for in the act under the clause "Crude Minerals," which reads the same in both the Act of 1890 and the Act of 1894, being paragraph 651 of the Act of 1890, and paragraph 556 of the Act of 1894, viz.: "Minerals, crude or not advanced in value or condition by refining or grinding or by other process of manufacture, not specially provided for."

The classification of the goods is to be determined as of the date the act was passed, and according to the actual character and condition of the article when imported.

Roseman vs. Hedden, 145 U. S. 561.
U. S. vs. Schooling, 146 U. S. 76.
Cadwallader vs. Zeh, 151 U. S., 171.
U. S. vs. Watton, C. C. A., 53 Fed. Rep., 344.
In re Van Blankensteyn, *supra.*

The fact that at the date of the act goods of a certain kind had not been manufactured, does not withdraw them from the class to which they belong, when the language of the statute clearly and fairly includes them.

Newman vs. Arthur, 109 U. S., 132.

"We do not wish to be understood as holding that in no case will the scientific designation of an article be of value in fixing its proper classification for duties."

Lutz vs. Magone, 153 U. S., 105.

The question whether a particular article is included in the particular name specified in the tarifi laws is for the appraisers.

Weilbacher vs. Merritt, 37 Fed. Rep. 446.

The designation is a fact to be proved, like any other, by evidence.

Seeberger vs. Schlesinger, 152 U. S.,585.

It must be evident that goods cannot be withdrawn from the operation of a general classification according to material, by designating them by particular names which merely indicate a subdivision of the general class named in the statute.

C. C. A., *in re* Clafflin, 52 Fed. Rep. 121.

In every case of doubt, the statutes relating to imports are to be construed most strongly against the government, and in favor of the citizen or importer. This is the uniform doctrine of the authorities.

Hartranft vs. Weigman, 121 U. S., 615.

Followed in

U. S. vs. Davis C. C. A., 54 Fed. Rep., 147.

Rice vs. U. S., 53 Fed. Rep. 910.

Henderson vs. U. S., 66 Fed. Rep., 55.

"Duties are never imposed on citizens upon vague or doubtful interpretations."

Hartranft vs. Weigman, supra.

Powers vs. Barney, 5 Blatch, 202.

U. S. vs. Isham, 17 Wall, 496.

Gurr vs. Scudds, 11 Exch., 190.

Adams vs. Bancroft, 3 Sumner, 384.
See also American Net and Twine Co.,
vs. Worthington, 141 U. S., 468.
Ross vs. Fuller, 17 Fed. Rep., 226.
McCoy vs. Hedden, 38 Fed. Rep., 89.
U. S. vs. Wigglesworth, 2 Story, 369.

Throughout the examination of the witnesses the Government's counsel inquired as to the proper designation of natural gas scientifically, and no objections were made by either the counsel for the importer or the counsel for the Government to questions of this kind asked of the expert witnesses. No objections to this evidence appear in the record. It is thus clearly shown that this class of evidence was deemed proper by the counsel for both appellant and appellee, and by the Board of General Appraisers, to assist the Board in determining the proper classification of natural gas.

Major Powell, Director of the United States Geological Survey, sworn in behalf of the government, gave similar testimony. (Page 46 seq.), answering a question of Mr. Bissell (p. 48).

Q. I find that in one of these statistical abstracts, natural gas is treated specifically as a non-metallic mineral. It is treated that way specifically and commercially, and that you would regard as a proper classification?

A. I should not think I made a strict classification (p. 48).

Q. Supposing it were of mineral composition?

A. If I knew it to have been derived from the mineral or inorganic world I would say it was a proper classification.

Q. That could be determined by analysis, could it not?

A. Yes.

Page 49 in answer to Mr. Bissell:

Q. Do you treat of that (petroleum) in these works on the mineral resources (Mineral Resources of the United States published by the U. S. Geological Survey) among the minerals?

A. In that book we do not go into any theoretical matter. We do not classify or treat of any theoretical subjects in that book. *It is not intended for scholars or scientific men, but to give the people the best knowledge we can.* (Page 49).

Natural gas is included in every issue of this report among the *Mineral Resources of the United States.* The ninth report of the Geological Survey to the Secretary of the Interior contains the same classification of natural gas as a mineral, giving its commercial value for the year 1887 as nearly $16,000,000, together with other statistical information. (Pages 61, 62, 63). Major Powell further testifying (p. 49):

Q. Do you know how natural gas is obtained?

A. Somewhat. Do you mean how it is gotten up from the earth?

Q. Yes. It is by boring or process of mining, is it not?

A. Yes. (Folio 86). Sometimes it escapes without boring.

Q. It is obtained as minerals are?

A. As some minerals are, not all.

Mr. George H. Eldridge, called by the government and examined by Mr. Whitney, gave similar testimony.

On cross-examination, in answer to Mr. Bissell (page 52):

Q. Gas has been treated of comparatively recently, has it not, by mineralogists, what we call natural gas?

A. It is of comparatively recent discovery and use, yes.

* * * *

Q. You are engaged in the United States Geological Survey, are you not?

A. Yes.

Q. And are familiar with its work? I refer to this department where natural gas is included among the mineral recources of the United States.

A. I am not in the division of the Geological Survey which gets up *these mineral resources.* I am in another division of the Geological Survey, but I am familiar with the way in which they get up their mineral resources.

Q. A mineral is of three kinds, is it solid, liquid and gaseous?

A. It may be, yes.

Q. Depending upon its composition?

A. No, sir, not depending upon its composition, depending upon the physical condition, physical state, its surrounding state. By that I mean this. That you may take a gas and under great pressure and great cold, you can compress that gas to a solid.

Q. You could do that?

A. Yes, a liquid I should say, and even to a solid.

Q. You know how this gas is obtained? (Folio 91). It is obtained by mining processes, is it not?

A. I should say so, processes that come under mining.

Q. And if it is not changed by manufacture in any way, and it were a mineral, it would be known as a crude mineral would it not?

A. Yes.

Q. *So that in your judgment this natural gas could be properly classified as a crude mineral, could it not?*

A. *I should think it could be.* (Folio 91, p. 52.)

In answer to Mr. Whitney. (Folio 92, p. 53.)

Q. Should you regard that in the ordinary meaning of the phrase "a mineral," such a gas as oxygon, for instance, was included?

A. I should think so, yes.

In answer to Mr. Vrooman, also one of the government's counsel.

Q. I want to ask, are you familiar with petroleum?

A. Quite so.

Q. How do you regard it?

A. I have always called it a mineral.

Q. Are natural gas and petroleum derived from the same causes?

A. Practically, yes. (Folio 93, p. 53.)

It is therefore submitted that as no objections to this kind of evidence were raised by the Government on the hearing of the appeal to the Board of Appraisers, and the government counsel having also introduced the evidence of experts for the purpose of assisting the Board to determine the proper classification of natural gas, it is now too late on this appeal to urge that such evidence is incompetent and must be thrown out of consideration.

The record discloses not a single objection or exception to this class of evidence.

2. The finding of the Board also rests upon documentary evidence which is sufficient to sustain it.

This will be found at page 54 of the record, beginning with folio 93 and ending with folio 127.

Since the beginning of the publication of a report on the mineral resources of the United States in 1883, the chief of division of mining statistics has included natural gas in his annual report to the Director of the United States Geological Survey, who in turn has embodied these reports more or less completely in his annual report to the Secretary of the Interior. (Page 61).

Natural gas is classified as a crude mineral in both the 10th and 11th United States Census reports, and all intermediate publications which deal with its production or classification. (Page 61).

It is a notable fact as clearly showing the precedent for the classification of natural gas as a crude mineral, and the sanction of the United States government to such classification, that it, natural gas, is placed in the list of non-metallic minerals in the several numbers of the Statistical Abstract of the United States above quoted. The Statistical Abstract for 1891 is divided into thirty-nine titles or subdivisions. The 10th deals with mineral production, and on page 52, table 30, is given the quantities and values of minerals produced in the United States during the calendar years from 1886 to 1890, inclusive; thus treating natural gas under the designation of a mineral, *commercially as well as*

scientifically. This long sanction of the treatment of natural gas as a mineral by the government would seem to indicate that it is popularly included among the minerals sufficiently to constitute a popular usage. Nowhere is it treated otherwise by the government, than as a mineral, and Major Powell, at folio 95, page 49 of the record states that the report of the geological survey called "'Mineral Resources of the United States,' is not intended for scholars or scientific men, but to give the people the best knowledge we can."

The commercial value of natural gas as a mineral for the years 1886, 1887, 1888, 1889 and 1890 is given in this Statistical Abstract. (Page 61).

It is submitted that sufficient documentary evidence has been quoted to establish the fact that natural gas was and is commercially and scientifically known and designated as a mineral, and that the finding of the Board of Appraisers should be sustained on that evidence alone.

The attention of the Court is especially asked to the following pages of the record, pp. 63, 64, 67, 68, 69, 70 and 71.

III.

It has been judicially determined that natural gas is a mineral.

a. Recently the question arose in a case in Canada, (Ontario Natural Gas Co. vs. Smart, 19 Ont., 591), which was carried to the Court of Appeals of Ontario. The town of Gasfield leased the privilege of taking minerals under the highway to the Kingsville Gas Co. The Ontario Gas Co. applied

for an injunction to restrain the sinking of a well on the ground that natural gas was not a mineral.

The Court of Common Pleas stated the doctrine of British authorities to be that the word mineral included every substance which can be got from underneath the surface of the earth, and that natural gas fell within this definition. The case was carried to the Court of Appeals, where the decision of the lower Court was affirmed, the Chief Justice, saying, in part:

"There was hardly any attempt to rebut or dispute the accuracy of scientific nomenclature in describing minerals as solid, liquid and gas. The objection urged was that the legislature (especially at the date of the enactment) could not and did not include gas under the term 'minerals.' I cannot see how we can qualify the words used by the legislature when there is nothing in the enactment to explain or limit their ordinary meaning. On full consideration, I have arrived at the opinion that our learned brother could not properly have come to any other conclusion than that natural gas falls within the meaning of minerals in the statute."

Ontario Nat. Gas Co. vs. Gosfield, 18,
Ontario Appeals Report, 626–623.

b. In an old English case (Lord Macnaghten writing the opinion), the following rule is laid down as to the signification of the word mineral when used in a legal document:

"*It has been laid down that the word 'minerals,' when used in a legal document or in an act of parliament, must be understood in its widest signification,*

unless there is a something in the context or nature of the case to control its meaning."

Glasgow vs. Farie, 13 App, Cases, 690.

c. The English and American Encyclopedia of Law (under the heading "Natural Gas," 1. Nature and Character, Vol. 16, page 220), the text-writer thus treats natural gas legally as a mineral, as follows:

"Inflammable gas is formed in great abundance "within the earth in connection with carbonace- "ous deposits, such as coal and petroleum, and "similar accumulations not unfrequently occur in "connection with deposits of rock salt. The gases "from any of these sources, escaping by means of "fissures or seams to the open air, may be col- "lected and burned in suitable arrangements, and "are commonly called natural gas." Gas and Lighting, Encyc. Brit.)

"Though gas is a mineral, it is subject to the "decisions governing ordinary minerals, with many "qualifications, * * *

"Water, oil, and still more strongly, gas may "be classed by themselves, and have been not in- "aptly termed 'minerals *ferœ natura*.'"

In the note at page 221 of the American and English Encyclopedia of Law, under the heading "A Commercial Commodity," we find the following: "Natural gas is as much an article of commerce as iron ore, coal, petroleum or any other of the like products of the earth. It is a commodity which may be transported, and it is an article which may be bought and sold in the markets of the country.' And therefore a statute forbidding

the transportation of the gas from the State is void, as it is in conflict with the Constitution of the United States, which provides that the regulation of interstate commerce shall be with Congress.

State vs. Indiana, etc., Oil, Gas & Min. Co., 120 Ind., 579.

Crothers vs. Phila. Co., 118 Pa. State, 468.

Less common than wood or oil, it is nevertheless a fuel.

Citizens Gas, etc., Min Co. vs. Elwood, 114 Ind., 338.

See also Emerson vs. Com., 108 Pa. State, 126.

d. The Board of General Appraisers, a body clothed with judicial power and created for the purpose of fixing the proper classification of importation under the tariff law, §§ 12 & 14 Customs Administrative Act of June 10th, 1890, determined as a question of law and fact that natural gas should be classified as a crude mineral. (p. 72.)

The Circuit Court for the Northern District of New York affirmed the decision of the Board of General Appraisers. (p. 81.)

Judge Coxe, writing the opinion, says that "the Board of General Appraisers have considered the question involved with unusual care"; that it is the duty of the Court "to affirm the finding of the Board if fairly sustained by the proof" and that "their findings upon the facts should not be lightly set aside"; that "although the record does not show that natural gas has been imported into this country prior to the act of 1890, it does show that

it was well known at that date and had been an article of commerce for years and of course might at any time be brought to the United States from Canada or Mexico. Is it not fair to presume that had the law makers believed it subject to duty some definite provision would have been made for it in the statute." Even considering the question to be doubtful, the doubt should be resolved in favor of the importer."

The Circuit Court of Appeals for the Second Circuit (whose decisions in revenue cases were made final by the Federal Appellate Court's act of March 3, 1891, unless reviewed by writ of *certiorari* issued by this Court), affirmed the decision of the Court below. Judges Lacombe and Shipman (p. 86) holding that "there is no evidence in the record of any special trade meaning of the words 'crude minerals.'"

That we are left "to determine the meaning of these words from judicial knowledge of the ordinary meaning of words of speech unless there is sufficient in the record to show that some modification of their ordinary signification was in the minds of Congress when it passed the Act." That in view "of the various official publication by the Federal Government set forth in the record, and which are not intended for scholars or scientific men, but to give to Congress and the people the best knowledge the compilers can, there can be but little doubt as to what Congress understood to be the scope and meaning of the words, a scope and meaning which is within some, at least, of the definitions of the lexicographers." The opinion which was written by Judge Lacombe, and concurred in by Judge

Shipman, proceeds with a review of the Statistical Abstracts of the United States, hereinabove fully set forth, and calls attention to the fact that these Abstracts contain tables giving the quantities and values of minerals produced in the United States during the five or six years immediately preceding the year of publication, and that natural gas is included and enumerated as sixth on the list of the non-metallic minerals in the Statistical Abstract of 1888, and that the same is true of the Statistical Abstracts of 1889 and 1890.

Concluding: "It thus appears that the report to which it is to be supposed that Congress refers for enlightenment as to the statistics of the products of this country used the word 'minerals' in a sense broad enough to include natural gas, and if there be any doubt as to the ordinary meaning of that word it is to be presumed that Congress, when legislating as to the rates of duty to be laid upon the products of other countries, used such word with a meaning equally comprehensive. We do not undertake in this case to decide whether or not natural gas is a crude bitumen." "Since natural gas comes fairly within the general provision for crude minerals and is therefore free, it is unnecessary now to inquire whether it is also within the more specific description, crude bitumen, which is also free. The Board of General Appraisers properly reverses the collector's assessment of the article for duty. It is not a 'raw or unmanufactured article not enumerated.'"

Judge Wallace concurred in an affirmance (p. 88), but based his decision upon the ground that the

record shows that the natural gas is a "crude bitumen," and that that being the more specific term of description, it is excluded from the category of "minerals crude." All of the various decisions combine to confirm the correctness of the classification made by the Board of General Appraisers.

It is therefore respectfully submitted that in every aspect of this case the law and the facts concur in the designation, both commercially and scientifically, of natural gas as a crude mineral, the designation being definite, uniform and general, and that the decisions of the Circuit Court of Appeals affirming the decision of the Circuit Court for the Northern District of New York affirming the decision of the Board of General Appraisers, classifying natural gas as a crude mineral and sustaining the claim of the importer, that it is exempt from duty under paragraph 651 of the Tariff Act of 1890, should be affirmed by this Court.

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